

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAN C.,

Plaintiff,

v.

ANTHEM BLUE CROSS LIFE AND
HEALTH INSURANCE COMPANY, *et*
al.,

Defendants.

Case No. 2:22-cv-3647-FLA (AJRx)

**ORDER GRANTING IN PART
PLAINTIFF’S MOTION FOR
ATTORNEY’S FEES AND COSTS
[DKT. 119]**

RULING

Before the court is Plaintiff Dan C.’s (“Plaintiff”) Motion for Attorney’s Fees (“Motion”). Dkt. 119 (“Mot.”). Defendant Directors Guild of America—Producer Health Plan (“Defendant”) opposes the Motion. Dkt. 121 (“Opp’n”). The court took the matter under submission on June 20, 2024. Dkt. 127; *see* Fed. R. Civ. P. 78(b); Local Rule 7-15.

For the reasons stated herein, the court GRANTS in part the Motion and AWARDS Plaintiff: (1) \$280,245.00 in attorney’s fees; (2) \$2,889.00 in total costs; and (3) prejudgment interest on the past-due benefits owed, at the statutory rate specified in 28 U.S.C. § 1961(a).

BACKGROUND

This matter arises from the denial of a request for benefits under a tax-exempt, multi-employer health plan, governed under the terms of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1132, *et seq.* On April 18, 2024, the court entered judgment for Plaintiff. Dkt. 118.

The background facts and relevant procedural history regarding the parties’ dispute are set forth in the court’s Order Following Bench Trial, issued on April 9, 2024 (Dkt. 116, “Trial Order”), which the court incorporates by reference into this Order.

DISCUSSION

I. Legal Standard

ERISA vests courts with the discretion to award attorney’s fees to either party. 29 U.S.C. § 1132(g)(1) (“[T]he court in its discretion may allow a reasonable attorney’s fee and costs of action to either party”). Courts “ordinarily grant a prevailing beneficiary in an ERISA action reasonable attorneys’ fees and costs, absent special circumstances cautioning against it.” *Boston Mut. Ins. v. Murphree*, 242 F.3d 899, 904 (9th Cir. 2001).

In determining whether to grant an award of fees, a court must first decide whether the claimant has “achieved some degree of success on the merits.” *Simonia v. Glendale Nissan/Infiniti Disability Plan*, 608 F.3d 1118, 1119 (9th Cir. 2010). If so, the court then considers five factors: (1) the degree of the opposing parties’ culpability or bad faith; (2) the ability of the opposing parties to satisfy an award of fees; (3) whether an award of fees against the opposing parties would deter others from acting under similar circumstances; (4) whether the parties requesting fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA; and (5) the relative merits of the parties’ positions (the “*Hummell* factors”). *Hummell v. S. E. Rykoff & Co.*, 634 F.2d 446, 453 (9th Cir. 1980). No single factor is dispositive. *Simonia*, 608 F.3d at 1122.

1 If a party is entitled to attorney’s fees, the court then determines the
2 reasonableness of the fee requested. The Ninth Circuit has adopted the “hybrid
3 lodestar/multiplier” approach “as the proper method for determining the amount of
4 attorney’s fees in ERISA actions.” *Potter v. Blue Shield of California Life and Health*
5 *Insurance Company*, Case No. 14-cv-00837-DOC (ANx), 2017 WL 11633695, at *6
6 (C.D. Cal. June 27, 2017).

7 **II. Analysis**

8 **A. Success on the Merits**

9 A claimant reaches “‘some degree of success on the merits’ ... if the court ‘can
10 fairly call the outcome of the litigation some success ... without conducting a lengthy
11 inquir[y] into the question whether a particular party’s success was substantial or
12 occurred on a central issue.’” *Harlow v. Metro. Life Ins. Co.*, 379 F. Supp. 3d 1046,
13 1052 (C.D. Cal. 2019) (cleaned up). Here, Plaintiff has reached some degree of
14 success on the merits as he prevailed on his request for payment of previously denied
15 medical benefits by Defendant—the central issue presented in this action—and
16 obtained judgment in his favor. Trial Order at 15; Dkt. 118.

17 **B. *Hummell* Factors**

18 Having determined Plaintiff has achieved success on the merits, the court
19 considers the *Hummell* Factors to determine whether an award is appropriate.

20 **1. Culpability or Bad Faith**

21 “For the purposes of this factor, it can be sufficient to show that the defendants
22 are ‘culpable’ in that they were found to owe Plaintiff a legal duty that they were not
23 fulfilling.” *Soohyun Cho v. First Reliance Standard Life Ins. Co.*, Case No. 18-cv-
24 4132-MWF (SKx), 2020 WL 4341587, at *2 (C.D. Cal. May 27, 2020).

25 Here, the court found Defendant “disregarded relevant medical evidence and
26 did not afford Plaintiff a full and fair review of his claims” as required by ERISA.
27 Trial Order at 12. Additionally, the court found “[t]here [was] no indication that
28 Defendant ... engaged with the voluminous medical record, consulted with []

1 treatment providers, or ascribed any weight to the letters of medical necessity,” and
2 instead “summarily denied Plaintiff’s appeals” in violation of the fiduciary duties
3 imposed by ERISA. *Id.* at 13.

4 Moreover, after the court denied Defendant’s Motion for Summary Judgment
5 (Dkts. 79, 92), Defendant filed another Motion for Summary Adjudication (Dkt. 102)
6 in violation of the court’s standing order, which prohibits a party from filing “more
7 than one motion pursuant to Fed. R. Civ. P. 56 without leave of court, regardless of
8 whether such motion is denominated a motion for summary judgment or summary
9 adjudication,” thereby increasing Plaintiff’s litigation expenses. Dkt. 37 at 8.
10 Accordingly, the first *Hummell* factor weighs in favor of a fee award.

11 2. Ability to Satisfy Award

12 The second factor considers Defendant’s ability to satisfy a fee award. “[A]t
13 least as to a suit involving an ERISA beneficiary as a plaintiff, a defendant[]’s ability
14 to pay should weigh strongly in favor of an award of fees.” *Micha v. Sun Life*
15 *Assurance of Canada, Inc.*, 874 F.3d 1052, 1058 (9th Cir. 2017). Defendant
16 challenges whether this factor weighs in Plaintiff’s favor, but concedes it “has the
17 financial ability to pay fees[.]” Opp’n at 10. Thus, this factor supports a fee award.

18 3. Deterrence

19 The third factor asks whether the awarding of fees in the instant matter would
20 deter future violations of ERISA. *Hummell*, 634 F.2d at 453. Plaintiff argues this
21 “action exposed a claims handling process that is clearly flawed and lacks proper
22 oversight. A substantial attorney’s fee award will send a message to [Defendant] that
23 it must stop the rubber-stamp approach to mental health claims that was evidence
24 herein.” Mot. at 15. Defendant counters an “award of fees will have no deterrent
25 effect because [it] relied upon multiple Board Certified doctors in upholding the denial
26 of Plaintiff’s claim for benefits.” Opp’n at 11. The court agrees with Plaintiff.

27 Regardless of Defendant’s justifications for its actions, the court held Defendant
28 violated ERISA by depriving Plaintiff “a full and fair review of his claims,” (Trial

Order at 12), and finds the “prospect of paying fees would [] create an additional incentive for [Defendant] to comply with ERISA[.]” *Villalobos v. Downey Grinding Co.*, Case No. 19-cv-00150-JVS (ADSx), 2022 WL 2965669, at *4 (C.D. Cal. Feb. 3, 2022) (internal citations omitted). Additionally, “declining to award fees may deter future plaintiffs from bringing lawsuits.” *Id.*; see also *Cohen v. Aetna Life Insurance Company*, Case No. 19-cv-01506-DOC (DFMx), 2021 WL 2070205, at *4 (C.D. Cal. May 18, 2021) (finding third factor supported fee award because court’s “findings and conclusions indicated that Plaintiff had a valid argument for benefits”).

4. Significance of Legal Issue or Benefit to Plan Participant

The fourth factor weighs in favor of an award “when a claimant benefits other plan participants or the plan as a whole.” *Cohen*, 2021 WL 2070205, at *5 (citing *Mardirossian v. Guardian Life Ins. Co. of America*, 457 F. Supp. 2d 1038, 1045 (C.D. Cal. 2006)). A claimant provides such benefit when the action “assist[s] plan fiduciaries to some degree in their future administration of plan benefits,” or clarifies the terms of the plan “by settling a disputed provision or an ambiguity.” *Id.*

As stated, the court determined previously Defendant’s practices were violative of ERISA, and detailed a number of flaws in Defendant’s claim review process. Trial Order at 12–15 (holding, *inter alia*, Defendant disregarded relevant medical evidence, did not provide “any rational explanation for their findings,” failed to acknowledge “Plaintiff’s reliable evidence of medical necessity,” and impermissibly engaged the same medical doctor for review of Plaintiff’s first and second level appeals). Accordingly, Plaintiff “obtained a favorable judgement that will help future claimants clarify their right to [] benefits,” *Cohen*, 2021 WL 2070205, at *5, and an award of fees will benefit other ERISA plan participants in similar situations. This factor weighs in favor of a fee award.

5. Relative Merits of Parties’ Positions

Plaintiff argues this factor supports a fee award because the court found Defendant improperly withheld benefits from Plaintiff. Mot. at 16. Defendant

maintains its “position in this lawsuit was not unmeritorious ... and submits that there is substantial evidence in the administrative record from which one could reasonably conclude that Plaintiff was not entitled to benefits.” Opp’n at 13. As this factor requires consideration of the *relative* merits of the parties’ positions, the court finds this factor weighs in Plaintiff’s favor, as Plaintiff obtained “full relief by way of judgment.” *Cohen*, 2021 WL 2070205, at *5; Dkt. 118.

C. Reasonableness of the Fees and Costs Requested

Having found Plaintiff achieved success on the merits and the *Hummell* factors support an award, the court turns to the reasonableness of the fee requested using the lodestar method. To calculate the lodestar, courts multiply the number of hours reasonably expended on the litigation by the reasonable hourly rate in the community for similar work. *Potter*, 2017 WL 11633695, at *6.¹

1. Hourly Rate

“[T]he established standard when determining a reasonable hourly rate is the ‘rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation.’” *Villalobos*, 2022 WL 2965669, at *4 (citing *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973, 979 (9th Cir. 2008)).

Plaintiff’s counsel seek the following hourly rates: \$850 for founding partner David M. Lilienstein (“Lilienstein”); \$750 for partner Katie J. Spielman (“Spielman”); and \$250 for legal support staff. Mot. at 17. Lilienstein and Spielman attest to their education, experience, and expertise in litigating ERISA matters. Dkts. 119-1

¹ The court may increase or decrease the lodestar based on several factors, including the time and labor required, difficulty of the questions involved, skill required to perform the legal service, preclusion of other employment by the attorney due to acceptance of the case, customary fees, whether the fee is fixed or contingent, limitations imposed by the client, the amount involved and results obtained, reputation of the attorneys, the “undesirability” of the case, and the nature of the professional relationship between counsel and client. *Villalobos*, 2022 WL at 2965669, at *2. As Plaintiff does not request or explain the basis for imposing a multiplier, the court does not consider whether these factors warrant a variance in its award of fees.

1 (“Lilienstein Decl.”) ¶¶ 2–12; 119-4 (“Spielman Decl.”) ¶¶ 2–9. Plaintiff also submits
2 the declarations of attorneys Joseph Creitz, Brian Kim, Michelle Roberts, and Glenn
3 Kantor (all of whom are prominent practitioners in the area of employee benefits
4 litigation), who attest to the reasonableness of the hourly rates requested by Plaintiff’s
5 counsel and the positive reputation of Lilienstein and Spielman. Dkts. 119-6, 119-7,
6 119-8; *see United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th
7 Cir. 1990) (“Affidavits of the plaintiffs’ attorney and other attorneys regarding
8 prevailing fees in the community, and rate determinations in other cases, particularly
9 those setting a rate for the plaintiffs’ attorney, are satisfactory evidence of the
10 prevailing market rate.”); *Andresen v. International Paper Co.*, Case No. 13-cv-
11 02079-CAS (AJWx), 2015 WL 3648972, at *13 (C.D. Cal. June 10, 2015) (same).

12 In opposition, Defendant argues Plaintiff’s hourly rates are excessive, and
13 requests the court decrease the hourly rates to \$350 for Lilienstein, \$300 for Spielman,
14 and \$100 for legal staff as a “more adequate[] reflect[ion] of what lawyers/staff of
15 comparable skill, experience and reputation could command in the relevant legal
16 community.” Opp’n at 15–16. The court declines to do so.

17 As an initial matter, the comparison between Plaintiff’s counsel rates and
18 “defense counsel’s own rates ... is inapposite, as the relevant market is the market for
19 ERISA plaintiffs’ lawyers of comparable skill in the Central District of California.”
20 *Mosqueda v. Sedgwick Claims Management Services, et al.*, Case No. 21-cv-04811-
21 SB (ASx), 2022 WL 4546879, at *3 (C.D. Cal. Aug. 24, 2022) (cleaned up). Courts
22 in this district have approved similar rates as those requested by Plaintiff’s counsel.
23 *See Potter*, 2017 WL 11633695 (approving hourly rate of \$700 for lead counsel in
24 ERISA matter); *Cohen*, 2021 WL 2070205, at *10 (approving rate of \$750 per hour in
25 ERISA case); *Mosqueda*, 2022 WL 4546879, at *3 (approving hourly rate of \$800 per
26 hour).

27 Notably, too, Plaintiff has submitted evidence that Defendant’s counsel
28 previously sought \$640 per hour in a motion for recovery of attorney’s fees in a

1 separate matter. Dkt. 125-1, Ex. A. In support of that motion, Defendant's counsel
2 argued she "charges \$640 per hour," and that "in 2015, the Central District of
3 California Court held that \$750 per hour was a reasonable rate for a Partner in an
4 employment law case with twenty years of experience." *Id.* (citing *Andresen*, 2015
5 WL 3648972, at *13).

6 Accordingly, after reviewing the parties' arguments and materials submitted,
7 and based on the court's own knowledge and experience, the court finds the hourly
8 rates requested by Plaintiff's counsel are reasonable and consistent with rates charged
9 by attorneys with comparable skill and experience litigating actions of similar
10 complexity in this district.

11 2. Hours Expended

12 "The fee applicant bears the burden of documenting the appropriate hours
13 expended in the litigation and must submit evidence in support of those hours
14 worked." *Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir. 1992). Plaintiff's
15 counsel has submitted its billing records, broken down by attorney, task performed,
16 and hours expended on each task. Lillienstein Decl., Ex. A; Spielman Decl., Ex. A.
17 In total, the billing records account for 398.9 hours (171.3 hours spent by Lillienstein,
18 140.2 hours by Spielman, and 87.4 hours by legal staff). Dkt. 125-1, Ex. C.

19 Defendant argues the hours should be reduced because a majority of the "time
20 entries contain vague and inadequate descriptions," and "many entries are block
21 billed." Opp'n at 16. Block billing is the process of "showing one amount of time for
22 multiple discrete tasks." *Rangel v. Aetna Life Insurance Company*, Case No. 15-cv-
23 00303, 2016 WL 1449539, at *6 (C.D. Cal. Apr. 12, 2016).

24 The court finds the time entries to be sufficiently detailed and to reflect a
25 reasonable number of hours for the tasks performed in this matter. With respect to
26 Defendant's claims of block billing, a number of the challenged entries indeed group
27 multiple tasks into time entries; however, these entries involve interrelated tasks
28 which are often conducted together. For example, Lillienstein billed 2.7 hours for

1 “legal research re motion to dismiss, prepare my declaration, draft Opposition,” and
2 Spielman billed four hours to “prepare for bench trial, run through powerpoint, [and]
3 review administrative record and chronology.” Lilienstein Decl., Ex. A; Spielman
4 Decl., Ex. A. Moreover, a majority of the entries Defendant challenges as being block
5 billed amount to less than one hour in total. Thus, Plaintiff’s counsel have not
6 “lumped together discrete tasks,” so as to “make[] the task of evaluating the
7 reasonableness of the time spent” more difficult. *Dragu v. Motion Picture Industry*
8 *Health Plan for Active Participants*, 159 F. Supp. 1121, 1129 (N.D. Cal. 2016)
9 (declining to strike entries for block billing where counsel “simply chose to devote
10 large chunks of time to a single task”).

11 3. Costs

12 Pursuant to 29 U.S.C. § 1132(g)(1), the court “in its discretion may allow a
13 reasonable attorney’s fee and costs of action to either party.” However, a claimant
14 may recover “only the ‘costs’ allowed by 28 U.S.C. § 1920 and only in the amounts
15 allowed by section 1920 itself, by 28 U.S.C. § 1821, or by similar such provisions.”
16 *Harlow*, 379 F Supp. 3d at 1060 (internal quotations marks and citation omitted). A
17 court may also award “reasonable out-of-pocket litigation expenses that would
18 normally be charged to a fee paying client, even if the court cannot tax these expenses
19 as ‘costs’ under 28 U.S.C. § 1920.” *Trustees of Const. Indus. & Laborers Health &*
20 *Welfare Tr. v. Redland Ins. Co.*, 460 F.3d 1253, 1257 (9th Cir. 2006); *see also*
21 *Harlow*, 379 F. Supp. 3d at 1060. “Reasonable attorney’s fees” include litigation
22 costs and expenses “only when it is the prevailing practice in a given community for
23 lawyers to bill those costs separately from their hourly rates.” *Trustees*, 460 F.3d at
24 1257 (internal quotation marks and citation omitted).

25 Plaintiff seeks a total of \$3,296.37 in costs and litigation expenses. Mot. at 22.
26 First, Plaintiff seeks statutorily approved costs in the amount of \$402 for filing fees.
27 *Id.* This cost is recoverable under 28 U.S.C. § § 1920(1) as a filing cost paid to the
28 clerk of the court.

1 Plaintiff's counsel also incurred \$2,894.37 in costs to prepare a PowerPoint
2 exhibit for use during the bench trial and for expenses incurred during travel to attend
3 hearings and trial in Los Angeles,² and contends these costs are recoverable because
4 they are "customarily charged to clients in this legal community." Mot. at 22;
5 Lilienstein Decl., Ex. B. The court has reviewed the travel-related costs—specifically,
6 airfare, transportation, and lodging—and concludes such expenses are reasonable and
7 recoverable. *See Vasquez v. Cargill, Inc.*, Case No. 06-cv-00008-CJC (RNBx), 2008
8 WL 7825955, at *7 (C.D. Cal. Mar. 13, 2008) (allowing recovery of postage, airfare,
9 lodging, and mileage costs in ERISA matter); *Oldoerp v. Wells Fargo and Company*
10 *Long Term Disability Plan*, Case No. 08-cv-05278-RS, 2014 WL 2621202, at *8
11 (N.D. Cal. June 12, 2014).

12 However, the court reduces recovery of costs by \$407.37 for the entry titled
13 "Ace Attorney Service," as Plaintiff does not offer any description for this expense
14 from which the court can determine whether recovery is permissible or reasonable.
15 Lilienstein Decl., Ex. B. To the extent this cost was incurred for preparation of the
16 PowerPoint exhibit used during the bench trial, Plaintiff does not provide authority
17 supporting recovery for such expenses. Accordingly, the court grants Plaintiff's
18 requests for costs in the amount of \$2,889.00.

19 **D. Prejudgment Interest**

20 Plaintiff also requests prejudgment interest on the benefits due by Defendant.
21 Mot. at 22-23. "A district court may award prejudgment interest on an award of
22 ERISA benefits at its discretion." *Blankenship v. Liberty Life Assurance Co. of*
23 *Boston*, 486 F.3d 620, 627 (9th Cir. 2007). The decision as to whether to award such
24 interest is "a question of fairness, lying with the court's sound discretion, to be
25 answered by balancing the equities." *Landwehr v. DuPree*, 72 F.3d 726, 739 (9th Cir.

26
27 ² Plaintiff filed this action originally in the Northern District of California, where
28 Plaintiff's counsel is located, but ultimately litigated the matter in this district after
Defendant's motion to transfer venue to this district was granted. Dkts. 16, 30.

1 1995). “[T]he interest rate prescribed for post-judgment interest under 28 U.S.C. §
2 1961 is appropriate for fixing the rate of pre-judgment interest unless the trial judge
3 finds, on substantial evidence, that the equities of that particular case require a
4 different rate.” *Blankenship*, 486 F.3d at 628 (internal citation omitted). The interest
5 rate may compensate a plaintiff for “the losses he incurred as a result of [the
6 defendant's] nonpayment of benefits.” *Doe v. Prudential Insurance Company of*
7 *America*, 258 F. Supp. 3d 1089, 1093 (C.D. Cal. 2017).


8 The court exercises its discretion to award Plaintiff pre-judgment interest at the
9 statutory rate prescribed in 28 U.S.C. § 1961 to compensate Plaintiff for the denial of
10 benefits. *See Hawkins-Dean v. Metropolitan Life Ins. Co.*, 514 F. Supp. 2d 1197,
11 1200 (C.D. Cal. 2007) (awarding prejudgment interest because “[o]ver the past eight
12 years, Plaintiff ha[d] been denied the correct amount of disability payments to which
13 she was entitled”); *Porco v. Prudential Ins. Co. of America*, 682 F. Supp. 2d 1057,
14 1081 (C.D. Cal. 2010) (“As the court has concluded that [plaintiff] was entitled to
15 benefits at the time they were terminated, it finds that an award of prejudgment
16 interest is appropriate to make him whole.”).

17 CONCLUSION

18 For the reasons stated above, the court GRANTS in part Plaintiff’s Motion and
19 AWARDS Plaintiff: (1) \$280,245.00 in attorney’s fees; (2) \$2,889.00 in costs; and (3)
20 prejudgment interest on the benefits owed, at the statutory rate specified in 28 U.S.C.
21 §1961(a).

22
23 IT IS SO ORDERED.

24
25 Dated: August 30, 2024

26
27 
28 FERNANDO L. AENLLE-ROCHA
United States District Judge